

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA**

<b>IN THE MATTER OF THE APPLICATION ) BY WILD SPRINGS SOLAR, LLC FOR A ) PERMIT OF A SOLAR ENERGY FACILITY ) IN PENNINGTON COUNTY, SOUTH ) DAKOTA )</b>	<b>ORDER GRANTING MOTION TO ) APPROVE DECOMMISSIONING ) CONDITION AND FINAL DECISION ) AND ORDER GRANTING PERMIT ) TO CONSTRUCT FACILITY; NOTICE ) OF ENTRY</b>
---	---

**EL20-018**

**APPEARANCES**

Commissioners Gary Hanson, Chris Nelson, and Kristie Fiegen.

Ms. Mollie M. Smith - Representing: Wild Springs Solar, LLC, Attorney, Fredrikson & Byron, P.A., 200 S. Sixth St., Ste. 4000, Minneapolis, MN 55402, appeared on behalf of Applicant, Wild Springs Solar, LLC (Wild Springs or Applicant).

Amanda Reiss, 500 E. Capitol Ave., Pierre, South Dakota 57501, appeared on behalf of the South Dakota Public Utilities Commission Staff (Staff).

Judy Bundorf, Trustee Bundorf Family Trust, 1800 Sterling Point Court, Henderson, NV 89012

**PROCEDURAL HISTORY**

On May 15, 2020, the Commission received an Application for a Facility Permit (Application) from Wild Springs Solar, LLC, a wholly owned subsidiary of Geronimo Energy, LLC. Wild Springs proposes to construct a solar energy facility to be located in Pennington County, South Dakota (Project).

On May 21, 2020, the Commission electronically transmitted notice of the filing and the intervention deadline of July 14, 2020, to interested persons and entities on the Commission's PUC Weekly Filings electronic listserv. A telephonic public input meeting on the application and project was held on July 1, 2020, pursuant to SDCL 49-41B-15, 49-41B-16, and Executive Order EO2020-16.

On July 14, 2020, the Commission received an application for party status for the Bundorf Family Trust and on July 28, 2020, the Commission issued an Order Granting Party Status to the Bundorf Family Trust. On August 6, 2020, the Commission issued an Order Adopting Procedural Schedule. On October 30, 2020, Wild Springs, Staff and Bundorf Family Trust (collectively "the parties") filed a Joint Motion for Approval of Settlement Stipulation resolving all issues between the parties except for the appropriate decommissioning financial assurance. On November 4, 2020, Wild Springs filed a Motion to Have Witnesses, Representatives, and Counsel Appear via Video Conference or Telephonically and a Motion for Approval of Decommissioning Condition.

On November 6, 2020, Intervenor, Judy Bundorf, Trustee Bundorf Family Trust, submitted a letter regarding approval of the Settlement Stipulation and advisement she did not intend to participate in the hearing.

On November 12, 2020, the Commission granted the parties' Joint Motion for Approval of Settlement Stipulation resolving all issues between the parties except for the appropriate

decommissioning financial assurance, granted Wild Springs' Motion to Have Witnesses, Representatives, and Counsel Appear via Video Conference or Telephonically, and deferred Wild Springs' Motion for Approval of Decommissioning Condition to the November 24, 2020, Commission meeting. On November 20, 2020, Wild Springs filed a revised decommissioning condition for Commission consideration.

The Project would be situated within approximately 1,499 acres and located approximately ½ mile south of New Underwood, South Dakota. The total installed capacity of the Project would not exceed 128 megawatts (MW) alternating current (AC) of nameplate capacity. The Project is expected to be completed in 2022. Applicant estimates the total cost of the Project to be \$190 million.

The Commission has jurisdiction over this matter pursuant to SDCL Chapters 1-26 and 49-41B, specifically 49-41B-22, 49-41B-24, 49-41B-25, and 49-41B-39 and ARSD Chapters 20:10:01 and 20:10:22.

At its regularly scheduled meeting on November 24, 2020, the Commission considered these matters. Having thoroughly reviewed the filings in the docket and after making further inquiry of the parties the Commission determined that a reasonable method for funding the decommissioning of a solar energy project rests primarily on sound judgment after considering all of the various options that may be used to fund decommissioning. The Commission finds that the record submitted by Applicant was sufficient for the Commission to impose a bond condition regarding decommissioning for this particular project, the irrevocable nature of the bond as set forth in the condition alleviated concerns regarding the surety's ability to walk away from decommissioning should the project owner become insolvent., and with respect to financial security for decommissioning, a surety bond that complies with the condition adopted here-in is an appropriate financial assurance to cover decommissioning costs. It is therefore

ORDERED, that a permit to construct the Wild Springs Solar Project is granted to Wild Springs Solar, LLC for the construction and operation of the Project. It is further

ORDERED, that Applicant shall comply with all the attached Permit Conditions and Bond Conditions, which are incorporated by reference into this Order the same as if they had been set forth in their entirety herein. It is further

ORDERED, that the previously approved Stipulation is incorporated by reference into this Order the same as if it had been set forth in its entirety herein.

### **NOTICE OF ENTRY**

PLEASE TAKE NOTICE that this Final Decision and Order Granting Permit to Construct Facility was duly issued and entered on the 4<sup>th</sup> day December 2020.

Dated at Pierre, South Dakota, this 4<sup>th</sup> day of December 2020.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, electronically or by mail.

By: Adam Detheuck

Date: 12/04/20

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

Gary Hanson  
 GARY HANSON, Chairman

Chris Nelson  
 CHRIS NELSON, Commissioner

Kristie Fiegen  
 KRISTIE FIEGEN, Commissioner

**PERMIT CONDITIONS**

1. Applicant will obtain all governmental permits which reasonably may be required by any township, county, state agency, or federal agency, or any other governmental unit for construction and operation activity of the Project prior to engaging in the particular activity covered by that permit. Applicant shall file an itemized affidavit with the Commission attesting that all permits were properly obtained prior to commercial operation.
2. Applicant shall construct, operate, and maintain the Project in a manner consistent with (1) descriptions in the Application, (2) Application supplements and corrections, (3) responses to any data requests, (4) the Final Decision and Order Granting Permit to Construct Facility and Permit Conditions, (5) any applicable industry standards, (6) any permits issued by a federal, state, or local agency, and (7) applicable state law.
3. Applicant shall complete the Western Area Power Administration (WAPA) environmental review process as required by the National Environmental Policy Act (NEPA). Further, Applicant shall comply with and implement any requirements or commitments set forth in the WAPA NEPA review. Applicant expects the environmental review to be composed of an Environmental Assessment (EA) and issuance of a Finding of No Significant Impact (FONSI).
4. If construction of the Project commences more than four years after the date the permit is granted, pursuant to SDCL 49-41B-27, Applicant must certify to the Commission prior to construction that such facilities will meet the permit conditions.
5. The Permit shall not be transferable without the approval of the Commission pursuant to SDCL 49-41B-29.
6. Applicant agrees that the Commission's complaint process as set forth in ARSD Chapter 20:10:01 shall be available to landowners and other persons sustaining or threatened with damage as the result of Applicant's failure to abide by the conditions of the Permit or otherwise having standing to seek enforcement of the conditions of the Permit. Participating landowners are free to use the complaint process free from retribution or consequence regardless of any private easement term to the contrary.
7. At least 14 days prior to commencement of construction, Applicant shall provide each participating and non-participating landowner in the Project Area as shown in the Application and one-half mile outside the Project Area, using the names and addresses designated to receive the property tax bill sent by the county treasurer, with the following information:

- a) A copy of the Final Decision and Order Granting Permit to Construct Facilities with attached Permit Conditions;
- b) Detailed safety information describing:
  - a. Reasonable safety precautions for existing activities on or near the Project;
  - b. Known activities or uses that are presently prohibited near the Project; and
  - c. Other known potential dangers or limitations near the Project;
  - d. Construction/maintenance damage compensation plans and procedures (only to participating landowners);
  - e. The Commission's address, website, and phone number;
  - f. Contact person for Applicant, including name, e-mail address, and phone number.
8. In order to ensure compliance with the terms and conditions of this Permit pursuant to SDCL 49-41B-33, it is necessary for the enforcement of this Order that all employees, contractors, and agents of Applicant involved in this Project be made aware of the terms and conditions of this Permit.
9. Except as otherwise provided in the Permit Conditions, Applicant shall comply with all mitigation measures set forth in the Application and Applicant's responses to Staff data requests. Material modifications to the mitigation measures shall be subject to prior approval of the Commission.
10. Applicant will negotiate road use agreements with Pennington County, the City of New Underwood, and all affected townships, if required. Applicant will follow the terms of all road use agreements. When using haul roads, Applicant shall take appropriate action to mitigate wind-blown particles created throughout the construction process, including but not limited to implementation of dust control measures such as road watering, covering of open haul trucks when transporting material subject to being windblown, and the removal of any soils or mud deposits by construction equipment when necessary.
11. In accordance with applicable road use agreements or applicable law, Applicant shall comply with or ensure the following conditions regarding road protection:
  - a) All necessary permits authorizing the crossing of federal, state, county, township, and municipal roads are properly acquired.
  - b) Applicant shall coordinate road closures with federal, state, and local governments and emergency responders.
  - c) If required by a road use agreement or as otherwise agreed with the road use authority, a regular program of road maintenance and repair through the active construction period to keep paved and gravel roads in an acceptable condition for residents and the public shall be implemented.
  - d) In accordance with any road use agreement or as otherwise agreed with the road use authority, after construction, Applicant shall repair and restore deteriorated roads resulting from construction traffic or compensate governmental entities for their repair and restoration of deteriorated roads, such that the roads are returned to their preconstruction

condition.

- e) Within 180 days of completing construction and reclamation of the Project, Applicant shall submit documentation to the Commission identifying that the roads were repaired in accordance with this Condition 11 and to the satisfaction of affected local governmental entities. If the affected local governmental entities will not provide such documentation, then Applicant shall provide a report to the Commission on the outstanding road repair issues and how those issues will be resolved.
  - f) Privately owned areas used as temporary roads or paths during construction will be restored to their preconstruction condition, except as otherwise requested or agreed upon by the landowner.
  - g) Should Applicant need to widen any existing roadways during construction of the Project, Applicant shall return the roadways back to original width after completion of the Project, unless otherwise agreed upon with the federal, state, or local entities, or the landowner.
12. Applicant shall provide signage that identifies road closures and disturbances resulting from the Project in accordance with the most recent editions of the Manual on Uniform Traffic Control Devices as published by the Federal Highway Administration.
  13. Applicant shall promptly report to the Commission the presence of any critical habitat of threatened or endangered species in the Project Area that Applicant becomes aware of and that was not previously reported to the Commission.
  14. Applicant agrees to avoid direct impacts to cultural resources that are unevaluated, eligible for or listed in the National Register of Historic Places (NRHP). When a NRHP unevaluated, eligible or listed resource cannot be avoided, Applicant shall notify the South Dakota State Historic Preservation Office (SHPO) and the Commission of the reasons that complete avoidance cannot be achieved in order to coordinate minimization and/or treatment measures.
  15. Applicant agrees to develop an unanticipated discovery plan for cultural resources and human remains. Applicant will comply with SDCL 34-27-25, 34-27-26, and 34-27-28 for the discovery or human remains.
  16. Applicant shall file a final cultural resources report with the Commission prior to commercial operation. If any potential adverse impacts to NRHP unevaluated, listed, or eligible cultural resources are identified in the final cultural resources report, Applicant shall file with the Commission a report describing the SHPO-approved planned measures to ameliorate those impacts.
  17. Applicant shall provide the Stormwater Pollution Prevention Plan (SWPPP) to the Commission when Applicant has a final design for the Project. The SWPPP will outline the water and soil conservation practices that will be used during construction to prevent or minimize erosion and sedimentation. The SWPPP shall be completed as required by the National Pollutant Discharge Elimination System (NPDES) general permit for construction activities. Applicant will give a copy of the SWPPP to all contractors to be engaged in ground disturbing activities and applicant will review the requirements with them prior to the start of construction.
  18. Applicant shall repair and restore areas disturbed by the construction or maintenance of the Project. Except as otherwise agreed to by the landowner, restoration shall include replacement of original pre-construction topsoil or equivalent quality topsoil to its original elevation, contour, and compaction and re-establishment of original vegetation as specified below. In order to facilitate compliance with this Permit Condition, Applicant shall:

- a. Strip the topsoil to the actual depth of the topsoil, or as otherwise agreed to by the landowner in writing (e-mail is sufficient), in all areas disturbed by the Project; however, with respect to access roads, Applicant may remove less than the actual depth of the topsoil to ensure roads remain low-profile and the contours align with the surrounding area;
  - b. Store the topsoil separately from the subsoil in order to prevent mixing of the soil types;
  - c. All excess soils generated during the excavation shall remain on the same landowner's land, unless the landowner requests or agrees otherwise in writing (e-mail is sufficient); and
  - d. When revegetating, Applicant shall use a seed mix that is recommended by the Natural Resource Conservation Service (NRCS), or other land management agency, unless otherwise agreed upon with the landowner in writing (e-mail is sufficient).
19. The spread of noxious weeds will be avoided or minimized by delivering clean, washed vehicles to the site; using weed-free straw or wattles for erosion control, if readily available; and through the use of weed-free seed mixes following construction. Applicant shall implement the noxious weed control plan developed in coordination with the Pennington County Weed & Pest/Natural Resources Director, and will utilize weed free seed mixes developed in coordination with the NRCS.
20. Applicant shall stage construction materials in a manner that minimizes the adverse impact to landowners and land users as agreed upon between Applicant and landowner or Applicant and the appropriate federal, state, and/or local government agency. All excess (non-permanent) construction materials and debris shall be removed upon completion of the Project, unless the landowner agrees otherwise.
21. Applicant shall take appropriate precautions to protect livestock during construction. Applicant shall repair all fences and gates removed or damaged during construction or maintenance unless otherwise agreed upon with the landowner or designee. Applicant shall be responsible for the repair of private roads damaged when moving equipment or when obtaining access to the right-of-way.
22. Applicant shall bury the underground collector system at a minimum depth of 4 feet, or deeper if necessary, to ensure the current land use is not impacted. This condition does not apply to any aboveground portion of the collector system.
23. Applicant shall repair or replace all property removed or damaged during all phases of construction, including but not limited to, all fences, gates, and utility, water supply, irrigation or drainage systems. Applicant shall compensate the owners for damages or losses that cannot be fully remedied by repair or replacement, such as lost productivity and crop and livestock losses. All repair, replacement and/or compensation described above shall be in accordance with the terms and conditions of written agreements between Applicant and affected landowners where such agreements exist.
24. Applicant shall, in the manner described in its written agreement with a landowner, indemnify and hold the landowner harmless for loss, damage, claim, or actions resulting from Applicant's use of the easement, including any damage resulting from any release, except to the extent such loss, damage claim, or action results from the negligence or willful misconduct of the landowner or his employees, agents, contractors, invitees, or other representatives.
25. Applicant may adjust the location of the solar panels, tracking rack system and piers, inverters, and transformers (each, a Facility), so long as: they are located within the Land Control Area

identified in the Application; cultural resources are avoided or mitigated in consultation with the SHPO; active burrows within the 2019-mapped prairie dog colonies' extent are avoided; wetland impacts are avoided or are in compliance with applicable USACE regulations; and all other applicable regulations and requirements are met. Prior to implementing Facility adjustments, Applicant will file in the docket an affidavit demonstrating compliance with the limitations set forth above. Any Facility adjustment that does not comply with the aforesaid limitations, or any inverter, tracker or transformer model changes, would be considered a "material change," and Applicant shall file a request for approval of the "material change" prior to making the adjustment pursuant to the following approval process:

- For Facility adjustments, Applicant will file with the Commission and serve on the official Service List a request for approval of a material change that includes:
    - An affidavit describing the proposed Facility adjustment, the reason for the adjustment, the reason the adjustment does not comply with one or more Facility flexibility limitations set forth above, and information regarding compliance with all other applicable requirements; and
    - A map showing both the approved location and the proposed adjustment (in different colors).
  - For inverter, tracker or transformer model changes, Applicant will file with the Commission and serve on the official Service List a request for approval of the material change that includes the proposed model design specifications (to the extent different than the specifications provided for the model(s) identified in Table 9.5-3 of the Application), the distance to 55 dBA based on the manufacturer's noise modeling data, and the minimum distance to a parcel line from the changed component.
    - Once received, the information would be reviewed by Staff, and Staff will have 10 calendar days within which to request further Commission review.
    - If no further review is requested, Applicant may proceed with the Facility adjustment or model change.
    - If further review is requested, the Commission will issue a decision regarding Applicant's request at its next available regularly scheduled Commission meeting, subject to notice requirements, after the request for further review is made by Staff.
26. Applicant may adjust access roads, the collection/communication systems, weather stations, the operations and maintenance building, the parking lot, the Project substation, and temporary facilities, so long as they are located within the Land Control Area identified in the Application; cultural resources are avoided or mitigated in consultation with the SHPO; active burrows within the 2019-mapped prairie dog colonies' extent are avoided; wetland impacts are avoided or are in compliance with applicable USACE regulations; and all other applicable regulations and requirements are met.
27. Applicant will provide Global Positioning System (GPS) coordinates of the array extent to affected landowners at any time during the life of the Project if requested by the landowner. Coordinates will be provided in writing to landowners within 30 days of a request.
28. Not less than 30 days prior to commencement of construction work in the field for the Project, Applicant will provide to Staff the most current preconstruction design, layout, and plans. Applicant shall identify the tracker, inverter, and transformer models to be used for the Project

and provide an analysis demonstrating the sound levels comply with the Pennington County Conditional Use Permit. Applicant will also provide such additional Project preconstruction information as Staff requests.

29. Within 90 days after the Project's commercial operation date, Applicant shall submit a report to the Commission that provides the following information:
  - a) as-built location of structures and facilities;
  - b) the status of remedial activities for road damage, landowner property damage, environmental damage, or any other damage resulting from Project construction activities; and
  - c) a summary of known landowner complaints and Applicant's plan for resolving those complaints.
30. Applicant shall seek input from local emergency response personnel to properly and effectively coordinate an emergency response plan consistent with local resources and response abilities. Upon completion of construction, a Project operation emergency response plan shall be provided to Staff to make available to the general public on the Commission's website.
31. Prior to construction of the Project, Applicant will notify public safety agencies by providing a schedule and the location of work to be performed within their jurisdiction. The agencies contacted will include the South Dakota Department of Public Safety, the Pennington County Sheriff, the Pennington County Office of Emergency Management, and the New Underwood Volunteer Fire Department.
32. Applicant agrees to undertake two years of independently-conducted post-construction breeding bird surveys and associated nest monitoring within the Project site and adjacent reference areas for comparison. A copy of the reports and all further reports shall be provided to the United States Fish and Wildlife Service, South Dakota Game, Fish, and Parks (SDGFP), and the Commission. Applicant also agrees to provide the SDGFP with documentation on a Wildlife Incident Reporting System (WIRS) in the event that avian carcasses are discovered during routine operation and maintenance activities on an annual basis until the post-construction avian surveys are complete.
33. If the Project is decommissioned, Applicant will follow Section 5.0 of the Application and the decommissioning plan laid out in Appendix D of the Application. The Commission shall be notified prior to any decommissioning action.
34. The terms and conditions of the Permit shall be made a uniform condition of construction and operation, subject only to an affirmative written request for an exemption or amendment addressed to the Commission. A request for an exemption or amendment shall clearly state which particular condition should not be applied and the reason for the requested exemption. The Commission shall evaluate such requests on a case-by-case basis, which evaluation shall be completed within 60 days unless exigent circumstances require action sooner.
35. Applicant shall provide a copy of the Commission's Final Decision and Order Granting Permit to Construct Facilities; Notice of Entry and Permit Conditions in this docket to the affected county and municipalities in the Project Area within 30 days of issuance.
36. Applicant shall develop a plan for screening identified on Figures 4 and 5a of the Application and file the plan with the Commission at least 30 days prior to construction. Applicant shall



make a good-faith effort to consult the adjacent non-participating residence and incorporate any feedback received into the plan.

37. If the Project causes interference with radio, television, or any other licensed communication transmitting or receiving equipment, Applicant shall take all appropriate actions to minimize any such interference and shall make a good faith effort to restore or provide reception levels equivalent to reception levels in the immediate areas just prior to construction of the Project. This mitigation requirement shall not apply to any dwellings or other structures built after completion of the Project.
38. Once the Project's design is finalized, Wild Springs must prepare and submit an updated decommissioning cost estimate to the Commission for review and approval. At least 60 days prior to commencement of commercial operation, Wild Springs shall file a surety bond with the Commission for Commission approval in the total amount of the approved decommissioning cost estimate naming the Commission as beneficiary. The bond may name Pennington County as an additional beneficiary. The surety bond shall remain in full force and effect until Wild Springs' decommissioning obligation is fulfilled. The Surety may only cancel the bond if it provides the Commission with 90 days' advance written notice and Wild Springs provides a replacement security acceptable to the Commission. If Wild Springs does not provide a replacement security, the Surety shall (1) rescind the bond cancellation, or (2) promptly arrange for the decommissioning of the Project as required per the decommissioning obligations, or (3) pay the bond beneficiary/ies for any out of pocket costs incurred to decommission the Project, minus salvage. Further, Wild Springs must provide an updated decommissioning cost estimate to the Commission for approval at the completion of year ten of operation and every five years thereafter, and Wild Springs must adjust the financial security provided to align with the cost estimate approved by the Commission.